

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 11,260 &
)	11,648
Appeal of)	

INTRODUCTION

The petitioners appeal the decisions by the Department of Social Welfare terminating their ANFC benefits because the youngest child in each petitioner's family has reached the age of eighteen and is not expected to graduate high school before turning nineteen. Although some aspects of each petitioner's circumstances are unique, because their underlying legal arguments are identical, and because both are represented by the same attorneys (the South Royalton Legal Clinic of the Vermont Law School), their appeals to the board have been consolidated.

FINDINGS OF FACT

The essential facts are not in dispute. In both cases the children in question are eighteen years old and are attending high school on a full-time basis. Although both of them are presently doing well in school and plan to graduate, both were diagnosed at an early age as having learning disabilities, and they were at one time eligible for and recipients of special education services. As part of those services, and because of their disabilities, both children had to repeat at least one early grade of school. As a result,

and for no other reason, neither child is scheduled to graduate high school before turning age nineteen.

The petitioners in these cases (the children's mothers) are unemployed single parents. They suffer from medical conditions of their own and have applied for disability benefits. At this time, however, without ANFC they have no means of support other than general assistance. Needless to say, the loss of their ANFC will impair not only their and their children's ability to meet basic living needs, but also the ability of their children to attend and finish school.

DISCUSSION

The underlying basis of the Department's decisions in these cases is a federal AFDC statutory provision, 42 U.S.C. § 606(a)(2), passed by Congress as part of the Omnibus Budget Reconciliation Act of 1981 (OBRA), that defines a "dependent child" as one who is either:

(A) under the age of eighteen, or (B) at the option of the state, under the age of nineteen and a full-time student in a secondary school...if, before he attains age nineteen, he may reasonably be expected to complete the program of such secondary school...

Since 1981, federal and state regulatory provisions have essentially mirrored this language. See 45 C.F.R. § 233.39(b) and W.A.M. § 2301 (in its regulations Vermont adopted the above eighteen-year-old "option").

In the instant cases there is no question that the

Department's actions are in accord with the above provisions. Both of the petitioners' children are over eighteen, and they will not graduate from high school before they turn nineteen. The petitioners argue, however, that the Department in terminating their ANFC benefits has violated certain provisions of state law, and that the federal statute and the federal and state regulations (supra) conflict with the anti-discrimination provisions of the Americans with Disabilities Act of 1990 (ADA) and violate constitutional equal protection.

The ADA at 42 U.S.C. § 12132 provides that:

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

In this case there is no dispute that the Department is a "public entity" within the meaning of the Act. See 42 U.S.C. § 12131(1). There is also no dispute that the Department, as a recipient of federal funding, is also subject to the similar anti-discrimination provisions of section 504. See 29 U.S.C. § 794. The Department also does not dispute that the petitioners' children meet the ADA definition of "disability". See 42 U.S.C. § 12102(2).

The petitioners maintain that both the age and graduation requirements of the federal and state statutes and regulations regarding ANFC eligibility for secondary school students age

eighteen and over violate the above anti-discrimination provisions of the ADA and section 504. Section 12131(2) of the ADA provides:

The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the public entity.

A crucial question in these cases is whether the petitioner's children, were it not for their disabilities, "meet the essential eligibility requirements" of the pertinent ANFC regulations. If so, 28 C.F.R. § 35.130(b)(7) provides:

A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

Incredibly, it appears that no federal or state court has yet considered whether the age and graduation restrictions in the AFDC statutes and regulations violate either the ADA or section 504. However, in promulgating federal regulations to implement the ADA the U.S. Attorney General commented that the following practices were prohibited:

. . . blatantly exclusionary policies and practices that are neutral on their face, but deny individuals with disabilities an effective opportunity to participate.

56 F.R. 35694, 35704 (1991).

Those comments make specific reference to Alexander v. Choate, 469 U.S. 287 (1985), a United States Supreme Court case decided prior to the enactment of the ADA that considered whether certain time limitations on inpatient hospital coverage under Medicaid discriminated against the handicapped in violation of section 504. The comments specify that the anti-discrimination provisions of the ADA are consistent with those in section 504 as interpreted in Choate. Id.

In Choate, the Supreme Court adopted a "meaningful access" test to determine that a "facially neutral" provision in the Tennessee Medicaid regulations that limited inpatient hospital coverage to fourteen days did not discriminate against handicapped individuals. Id. at 301. In that case the basis of the plaintiffs' argument was that as a general matter handicapped individuals required longer hospital stays. However, in rejecting this argument the Court concluded that ". . . nothing in the record suggests that the handicapped . . . will be unable to benefit meaningfully from the coverage they will receive under the 14-day rule." Id. at 302. However, the Court also made clear that there may well be circumstances in which ". . . reasonable adjustments in the nature of the benefit offered must at times be made to assure meaningful access." Id. at 301, footnote 21.

In the instant cases the petitioners make the similar argument that as a general matter it takes handicapped students longer to graduate from high school than their non-handicapped peers. Therefore, the petitioners argue, the general eighteen-year-old age limitation in the ANFC program is discriminatory. Accepting the factual premise of the petitioners' argument, it must nonetheless be concluded that under Choate the petitioners have not demonstrated that the eighteen-year-old age limitation, which applies to all AFDC recipients, denies the petitioners "meaningful access" to AFDC benefits to the same extent that non-handicapped individuals are eligible. Moreover, handicapped students over age eighteen (like their non-handicapped peers) simply do not "meet the essential eligibility requirements" of the ANFC program. See ¶ 12131(2) of the ADA, supra. The Board also agrees with the Department that to grant ANFC benefits to handicapped eighteen to twenty-one year olds would constitute a "fundamental alteration" of the ANFC program, and is not, therefore, a "reasonable modification" within the contemplation of the ADA or section 504. See Fair Hearing No. 7561.

The same cannot be said, however, of the so-called "graduation requirement" under the ANFC statutes and

regulations.¹ While the general eighteen-year-old age limitation in the ANFC program is closely analogous to the fourteen-day Medicaid coverage limitation in Choate, the nineteen-year-old graduation requirement is clearly distinguishable. As found above, it is only because of the disabilities of the petitioners' children that they cannot accomplish high school graduation before age nineteen. Thus, it must be concluded that the petitioners' children are indeed being denied an "effective opportunity to participate" in this aspect of the ANFC program to the same extent as non-handicapped recipients.

Moreover, as eighteen-year-old high school students the petitioners' children "meet the essential eligibility requirements" of the ANFC program in every other respect. Unlike extending the general age limitations beyond age eighteen only to handicapped individuals, supra, allowing the extension of ANFC benefits to those eighteen-year-old handicapped children who can demonstrate that were it not for their disabilities they would have been able to graduate high school before age nineteen would not constitute a "fundamental alteration" of the ANFC program. Such children would receive no more ANFC than certain other non-handicapped-eighteen-year-old students.

¹It does not appear that this distinction was clearly raised in Fair Hearing No. 7561; at least the board did not address it in its decision in that case.

The Department concedes that the purpose of the ADA and section 504 is to "assure that handicapped individuals receive evenhanded treatment". Choate, id. at 304. Regarding these petitioners' claims to ANFC benefits, at least until their children reach age nineteen, the Board cannot see how both the letter and purposes of the ADA and section 504 (supra) can be more precisely met. It is, therefore, concluded, that because the petitioners' children are high school students who, solely except for their disabilities, would meet the graduation requirements of 42 U.S.C. § 606(a)(2) and W.A.M. § 2301, under the ADA and section 504 the Department must continue the petitioners' ANFC benefits until the petitioners' children reach age nineteen.²

ORDER

The Department's decisions in these cases are modified in that the petitioners' ANFC benefits are continued until the petitioners' children reach age nineteen.

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²Given this conclusion, it is not necessary to rule upon any of the other arguments raised by the petitioners or addressed in the hearing officer's recommendation.